



March 10, 2017

Submitted Electronically

Federal Communications Commission
Office of the Secretary
445 12th St, S.W.
Room TW-A325
Washington, DC 20554

Re: Petition for Rulemaking and Declaratory Ruling of Craig Moskowitz and Craig Cunningham Regarding Prior Express Consent Under the Telephone Consumer Protection Act of 1991, CG Docket No. 05-338

The National Automobile Dealers Association (“NADA”) submits the following comments to the Federal Communications Commission (“FCC” or “Commission”) regarding the Commission’s request for comment (“Request”) on the Petition for Rulemaking and Declaratory Ruling of Craig Moskowitz and Craig Cunningham (“Petition”) Regarding Prior Express Consent Under the Telephone Consumer Protection Act of 1991 (“TCPA”).

NADA represents over 16,000 franchised dealers in all 50 states who (i) sell new and used cars and trucks; (ii) extend vehicle financing and leases to consumers that routinely are assigned to third-party finance sources; and (iii) engage in service, repair, and parts sales. Our members collectively employ over 1 million people nationwide. Most of our members are small businesses as defined by the Small Business Administration. Our members routinely communicate with their customers by phone and text message, and are therefore subject to the restrictions and obligations under the TCPA.

The Commission ruling being challenged by the Petition generally states that the provision of a wireless telephone number by a consumer “reasonably evidences” the consumer’s prior express consent to receive calls or text messages at that phone number (“Ruling”). The Petition seeks a rulemaking and declaratory ruling overturning that Ruling and requiring a different, higher standard to demonstrate “prior express consent.” We are opposed to the Petition and respectfully request that the Commission reject it in its entirety.

(a) The Petition Would Hurt Consumers

As noted above, automobile dealers engage in extensive communication with customers via phone and text. Customers are well served by, and have come to expect services such as pre-recorded phone calls or text messages that, for example, inform a service customer that their vehicle is ready to be picked up, or that a part they have ordered has arrived at the dealership parts department. These types of informational calls and texts are often most efficiently sent as prerecorded messages, and even when not prerecorded, given the very broad current interpretation of “autodialer,” could be deemed to have been “autodialed.”

We are concerned that the broad application of the standard sought, coupled with the increased risk of litigation would, at the least, make it less likely that businesses would be able or willing to utilize these more efficient communication methods, or to make these calls at all. Many businesses will not have the resources or systems to obtain and track the written consent requirements. Thus, the Petition, if granted would certainly limit, and could effectively deny the tremendous consumer benefits that these informational calls provide. In short, granting the Petition would not benefit consumers, but may only serve to increase litigation risks for businesses and ultimately inconvenience consumers.

(b) The Same Consumer Concerns About Pre-Recorded and Autodialed Marketing Calls and Text Messages Do Not Apply to Informational Calls or Texts

Informational calls simply do not raise the same consumer concerns as do pre-recorded and autodialed marketing calls and text messages. First, the Ruling applies only when the consumer provided the number to the entity calling/texting the consumer, and only as it relates to the purpose for which the telephone number was originally provided. Consumers who provide their phone number on an application or other form do so with more than just an implied expectation that they will be contacted at that number. They do so with the explicit understanding that they will be contacted at that number. Not only do they expect to be contacted at that number, many customers would be disappointed and unhappy *not* to be contacted at that number with respect to any relevant information related to the purpose for which they provided their wireless number.

In addition, as noted, the Ruling applies only to the specified informational calls and texts. Of course, such calls serve a different purpose from marketing calls. These types of calls/ texts are sent in order to inform and serve their consumers, and not to sell or promote their goods and services. Therefore, the same potential incentives for abuse simply do not exist with respect to non-marketing calls or text messages.

Moreover, the petitioners have not provided any reason why this change is needed, nor any real way the Petition would benefit consumers, or even that consumers generally do not like receiving such calls. The Petition seeks not only to overturn the Ruling, but also an explicit requirement

that the prior express consent for informational calls be in *writing*. In short, they seek the same standard for informational calls as for marketing calls – with no explanation of the need for this heightened standard for informational calls and no acknowledgment of the reasons those types of calls are treated differently under the TCPA.

(c) Conclusion

Because it would harm consumers by denying them desired and efficient access to vital information, we oppose the Petition and respectfully urge the Commission to reject it in its entirety.

Sincerely,

/s/

Bradley Miller
Director, Legal and Regulatory Affairs
National Automobile Dealers Association